

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-7214

TIMOTHY DAVIS,

APPELLANT,

v.

DENIS McDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENBERG, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On August 17, 2021, the Court issued a memorandum decision setting aside a July 2019 Board decision and remanding the matters on appeal for readjudication. On September 9, 2021, judgment entered. On November 10, 2021, the Court issued mandate on the merits of this appeal. On December 7, 2021, the appellant, through counsel, filed a timely application for attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. On December 17, 2021, the appellant's counsel notified the Court that the appellant had died on November 20, 2021.

On January 13, 2022, the Court ordered appellant's counsel to provide a copy of the death certificate and show cause why the Court should not dismiss the EAJA application. Proceedings on this appeal were stayed until further order of the Court. On February 14, 2022, appellant's counsel responded and informed the Court that a motion for substitution update had been filed at the RO and that, because the appellant had died at a VA facility, VA should possess a copy of the appellant's death certificate. The Court has since received a copy of the death certificate. On January 12, 2024, appellant's counsel notified the Court that "on March 20, 2023, the agency denied Ms. Giannirakis' request for substitution, and claim for accrued benefits." *See* January 12, 2024 *Solze* notice. Because there is no substitutable party, the Court will dismiss the EAJA application. It is

ORDERED that the stay in this matter is lifted. It is further

ORDERED that the appellant's EAJA application is dismissed.

DATED: January 31, 2024

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William S. Greenberg", with a stylized flourish at the end.

WILLIAM S. GREENBERG
Judge

Copies to:

Kenneth H. Dojaquez, Esq.

VA General Counsel (027)